

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN -7 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0220-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
BARON SYLVESTER GREEN II,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20030115

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Creighton Cornell, P.C.
By Creighton Cornell

Tucson
Attorney for Petitioner

H O W A R D, Presiding Judge.

¶1 Petitioner Baron Green seeks review of the trial court's summary denial of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. In his petition for review, Green claims that he had presented several colorable claims of ineffective

assistance of counsel and that the trial court erred when it denied all motions filed “in conjunction with the post-conviction litigation.” The trial court did not err in summarily denying post-conviction relief or in denying Green’s motions. Therefore, although we accept review, we deny relief.

Ineffective Assistance of Counsel

¶2 Green first argues that the trial court erred in denying his petition for post-conviction relief based on several assertions of ineffective assistance of counsel. Specifically, he asserts that trial counsel was ineffective in failing “to adequately investigate and/or argue the admissibility” of a witness’s testimony, in neglecting to subpoena several witnesses for trial, in failing to devote adequate “energy” in multiple phases of the trial to “advance the defenses,” and in neglecting to present sufficient mitigation evidence during sentencing. We review a trial court’s decision granting or denying post-conviction relief for an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). When a trial court’s order denying a petition for post-conviction relief “clearly identif[ies] the issues raised[, and e]ach issue raised is correctly ruled upon in a fashion that will allow any court in the future to understand the resolution[, then n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision.” *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 Here, in a detailed seven-page minute entry, the trial court clearly and correctly addressed the merits of the ineffective assistance claims Green raised in his petition for post-conviction relief. We will not repeat that analysis here. The trial court did not abuse its

discretion in denying post-conviction relief on Green’s claims of ineffective assistance of counsel.

Motions Filed in Conjunction with Post-Conviction Litigation

¶4 Green also contends the trial court erred when it denied “every [discovery-related] motion filed in conjunction with the post-conviction litigation.” We review the trial court’s denial of a motion seeking discovery in conjunction with a petition for post-conviction relief for an abuse of discretion. *See State v. Moreno*, 153 Ariz. 67, 70, 734 P.2d 609, 612 (App. 1986).

¶5 Rule 32 “does not provide a process for obtaining discovery in [post-conviction relief] proceedings.” *Canion v. Cole*, 210 Ariz. 598, ¶ 7, 115 P.3d 1261, 1262 (2005). Despite the absence of an explicit discovery procedure, however, “trial judges have inherent authority to grant discovery requests in [post-conviction] proceedings upon a showing of good cause. *Id.* ¶ 10.

¶6 We have already determined that the trial court correctly denied Green’s petition for post-conviction relief without a hearing. And because the trial court correctly dismissed Green’s petition, no further discovery or disclosure was warranted. Green has also failed to adequately explain how any denied discovery could have changed the outcome of the post-conviction proceedings. Accordingly, the trial court did not abuse its discretion when it implicitly determined that Green had not shown good cause as to why his discovery requests should have been granted.

¶7 Moreover, as to Green’s request for funding to hire experts, the “decision to expend public monies to assist the defense rests within the trial court’s sound discretion.” *See State v. Cornell*, 179 Ariz. 314, 321, 878 P.2d 1352, 1359 (1994). “[C]ourts cannot, consistent with limited budgets, be put in the position of having to pay for every item a defendant thinks may be useful.” *Id.* Green “does not have an unlimited right to all items that he believes are necessary for his defense.” *See id.* at 320-21, 878 P.2d at 1358-59. Accordingly, we find that Green has not shown the trial court abused its discretion when it denied his discovery motions filed in conjunction with his petition for post-conviction relief.

Conclusion

¶8 Based on the foregoing, we conclude the trial court did not abuse its discretion in denying Green’s petition for post-conviction relief. Therefore, although we grant the petition for review, we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge